

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10, SUBREGION 11**

MORGAN CORP.

and

Cases: 10–CA–250678

RUSSELL PAUL BANNON, an Individual

**COUNSEL FOR GENERAL COUNSEL’S OPPOSITION TO RESPONDENT’S MOTION
IN OPPOSITION TO ORDER DATED JUNE 15, 2020 SETTING TRIAL VIA VIDEO
USING ZOOM TECHNOLOGY**

Pursuant to Section 102.24 of the Rules and Regulations of the National Labor Relations Board (the Board), as amended, Counsel for General Counsel herein files this Opposition to Respondent’s Motion in Opposition to Order Dated June 15, 2020 Setting Trial via Video Using Zoom Technology. and opposes said motion on the following grounds:

On May 27, 2020, the Regional Director issued an Order Rescheduling Hearing in this matter, scheduling the hearing for July 14, 2020. On June 15, 2020, the Regional Director issued an Order Scheduling the Hearing by Videoconference (Videoconference Order). On June 16, 2020, Respondent filed its Motion in Opposition to Order Dated June 15, 2020 Setting Trial via Video Using Zoom Technology (Motion). In its Motion, Respondent argues that the Regional Director failed to follow the Board’s Rules and Regulations by issuing his Videoconference Order without first filing an application with the Administrative Law Judge. For the reasons set forth below, Respondent’s Motion should be denied.

At this stage of litigation, the Regional Director has authority to set the hearing location. Section 102.16 of the Board’s Rules and Regulations grants the Regional Director authority to change the hearing date and place “where more than 21 days remain before the scheduled hearing

date.” The Regional Director’s Videoconference Order issued on June 15, 2020, 29 days before the scheduled hearing date. As such, the Regional Director acted within his authority under Section 102.16 of the Board’s Rules and Regulations when issuing the Videoconference Order and changing the hearing from a physical location to a videoconference.

In its Motion, Respondent argues the Regional Director failed to comply with Section 102.35(c) of the Board’s Rules and Regulations, including by failing to show why there were “compelling reasons for the testimony.” However, the Board recently found that the current Covid-19 pandemic satisfied that standard. In *Morrison Healthcare*, 369 NLRB No. 76 (May 11, 2020), the Board found that “the current Coronavirus Disease (COVID-19) pandemic constitutes “compelling circumstances,” and that “to the extent that the hearing will involve witness testimony, we direct the Regional Director to conduct it by videoconference.” *Morrison Healthcare*, 369 NLRB slip op., at 2.

Moreover, to the extent Respondent argues that Counsel for General Counsel must state all witness names, addresses, and matters concerning which witness is expected to testify, Respondent’s argument fails. According to Respondent’s argument, for the hearing to take place via videoconference, Counsel for General Counsel would need to disclose all of its witnesses, and the matters that those witnesses would testify about, weeks before the scheduled hearing. Such a requirement would amount to impermissible prehearing discovery in a Board proceeding. See *Speigel Trucking Co.*, 225 NLRB 178, 178, fn. 5 (1976).

Here, the limited nature of the Complaint and the current pandemic dictate that this hearing should take place via videoconference. The Complaint involves a single 8(a)(1) discharge allegation. During the June 12, 2020 telephone conference call between the parties, Respondent and Counsel for General Counsel both represented that they anticipated anywhere between two to five witnesses each, likely with some overlap. In addition, the number of South Carolina Covid-19 cases has significantly increased since the beginning of June 2020, making it more hazardous to conduct a

physical hearing. Trackers from the *New York Times* show that South Carolina currently has more than 500 new Covid-19 cases per day. See *New York Times*, South Carolina Coronavirus Map and Case Count, available at <https://www.nytimes.com/interactive/2020/us/south-carolina-coronavirus-cases.html> Considering the circumstances, and the Board's direction in *Morrison Healthcare* to conduct hearings with witness testimony via videoconference under those circumstances, the Complaint need not be postponed a second time.

Based on the foregoing, Counsel for General Counsel respectfully submits that Respondent's Motion in Opposition to Order Dated June 15, 2020 Setting Trial via Video Using Zoom Technology be denied.

Dated at Winston-Salem, North Carolina, on the 18th day of June 2020.

Respectfully submitted,

/s/ Joel R. White

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Counsel for General Counsel's Opposition to Respondent's Motion in Opposition to Order Dated June 15, 2020 Setting Trial via Video Using Zoom Technology was served by regular mail on June 18, 2020, on the following:

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Date

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Signature